OMCO, INC.

IBLA 81-357 Decided June 1, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims the Blue Sky Nos. 1 through 139 abandoned and void. NM MC 89869 through NM MC 90007.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Assessment Work -- Mining Claims: Recordation

   Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

2. Mining Claims: Assessment Work

   The filing of evidence of annual assessment work in the county recording office or any office other than the proper BLM office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Fred T. Lopez, President, Omco, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Omco, Inc., through its president, Fred T. Lopez, has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 6, 1981, which declared appellant's mining claims the Blue Sky Nos. 1 through 139, NM MC 89869 through NM MC 90007 inclusive, abandoned and void for failure to file evidence of annual assessment work or notices of intention to hold the claims pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and its implementing regulations, 43 CFR 3833.2-1(c) and 3833.4.

Appellant's mining claims were located on October 15, 1979, and filed for recordation with BLM on January 10, 1980. No evidence of annual assessment work or notices of intention to hold were filed with BLM prior to December 31, 1980, or at any time thereafter. Accordingly, BLM declared the claims abandoned and void.

Appellant's president, Fred T. Lopez, asserts that work was performed, including survey, road building, and geological and geochemical testing. He states that he telephoned BLM in Santa Fe to inquire about the status of the claims, and was informed that proofs of labor had not been filed. He states he then called a Mr. Gallegos in Questa, New Mexico, and instructed him to file the proofs of labor. This occurred "around the middle of Dec. 1980." On a subsequent call, made on December 27, 1980, he states that Gallegos assured him that the proofs of labor had been filed.

In a letter received by the BLM State Office in Santa Fe on December 10, 1980, Adonario Gallegos, identified by appellant as its agent and part owner of the Blue Sky mining claims, asserted that proof of labor had been filed with the county courthouse on August 28 and that a copy of the proof of labor had been delivered to the BLM office in Taos, New Mexico, although he does not state when this allegedly occurred.

[1, 2] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 33833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or or a notice of intention to hold the mining claim. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). These claims

were located after October 21, 1976, in calendar year 1979. Thus, one or the other of the documents had to be filed prior to December 31, 1980, the year following the calendar year in which the claims were located, in order to meet the requirements of the law. The statute requires that they be filed "in the office where the location notice or certificate is recorded," and "in the office of the Bureau designated by the Secretary." 43 U.S.C. § 1744(a)(1) and (2). The regulation, 43 CFR 3833.1-2, provides that "file" shall mean being received and date stamped in the proper BLM office." The term "proper BLM office" is defined by 43 CFR 3833.0-5 as meaning the BLM office "listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located. In the State of New Mexico, it is BLM's New Mexico State Office at Santa Fe. It has long been the rule that where the proper office to receive filings of documents has been fixed by statute, a filing in a different office will be without effect. See Matthews v. Zane, 7 Wheat. 164, 5 U.S. 244 (1822) (opinion by Chief Justice John Marshall).

When appellant failed to file timely either an affidavit of assessment work or notice of intention to hold, BLM properly held the claims to be have been abandoned and declared them void. See Robert R. Eisenman, 50 IBLA 145 (1980), and cases cited therein.

The purpose of section 314(a) of FLPMA, supra, requiring recordation of assessment work with the proper BLM office is to ensure that BLM has a record of continuing activity on a claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 311-12 (D. Utah 1979). 1/ The responsibility for complying with the recordation requirements rests with appellant. Filing in the county clerk's office does not meet these requirements. This Board has no authority to excuse lack of compliance. Glen J. McCrorey, 46 IBLA 355 (1980).

The dissenting opinion relies on a series of assumptions, each dependent on the other, to arrive at a conclusion that the Government should be estopped. First, there is no evidence except Gallegos' unsupported assertion that the documents were submitted to BLM's Taos Area Office at all. No such document is part of the record. The dissenting opinion relies on the Gallegos letter to prove submission to the Taos office prior to December 8, but appellant's account of his telephone conversations with Gallegos indicates that, if they were submitted at all, it was done between "the middle of Dec. 1980" and December 27, when Lopez made his followup call to Gallegos. Finally, the dissenting opinion asserts that the question is whether Gallegos "had a right to rely on the fact that the Taos Office would either forward his filings to the State office or return to him in a moderately timely fashion." In order to create in Gallegos "a right to rely" on BLM's Taos office to forward

1/ Appeal pending.

or return it is necessary to assume that some responsible official in that office was guilty of affirmative misconduct by which Gallegos was mislead to his ultimate detriment, such as a promise to forward which was not kept. There is not the slightest hint in the record that any such thing occurred, although "affirmative misconduct" is an essential element to estop the Government. See United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978). In sum, the dissent relies on assumptions (1) that the documents were submitted to the Taos office at all; (2) that they were submitted sufficiently in advance of the due date that some sort of salutary action could be taken; (3) that the documents reflected sufficient information that a BLM employee not experienced or involved in mining claim recordation procedures would recognize them and be enabled to take appropriate action; (4) that a properly authorized BLM employee in the Taos office was guilty of affirmative misconduct in misrepresenting (or affirmatively concealing) a material fact, upon which Gallegos relied. None of these assumptions is shown by the record as established fact, and there is not even a hint that some of the others transpired. This is, by far, too speculative and conjectural a basis on which to apply the extraordinary equitable doctrine of estoppel against the United States.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI DISSENTING:

This Board has traditionally been reluctant to prescribe new requirements or increased standards of responsibility for the employees of the Bureau of Land Management. Much of this reluctance is attributable to the realization that, contrary to an increasingly prevalent perception, the nature and complexity of the tasks assigned to BLM employees has grown considerably over the past few years without any concomitant increase in staffing levels. This Board has recognized that every time it reverses a decision of BLM on the basis of a failure of its employees to take actions which the Board feels should have been taken, this Board is, in effect, directing that BLM take specified action in future cases along the lines on which the Board has decided the immediate appeal. We are, in a clear sense, directing the allocation of resources for particular duties. This Board must, therefore, be careful not to increase such responsibilities beyond those which should normally attend the fulfillment of the public duties and functions of the Bureau.

In the instant case, I do not disagree that the regulations clearly informed appellant that the annual assessment work filings should be made in Santa Fe, rather than Taos, where appellant alleges that he filed them. 1/ Thus, the initial error was clearly that of appellant. However, by letter of December 8, 1980, which was received by BLM on December 10, 1980, appellant's agent informed the State Office that he had filed copies of the proofs of labor in the county courthouse on August 28, and continued: "I also took a copy of the same to the office of - B,L,M. in Taos. I thought maybe they had sent * * * the copy to you for recordation. However, if it is your wish I can send you a photo copy of the same." There is no indication that the State Office ever responded to this letter. 2/

This recitation raises a number of questions. It seems clear that appellant alleges that he physically brought the proofs to the BLM Office in Taos. The first question then is, why did the Taos Office accept them? Certainly the officials in the Taos Office should have

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1/ While there is no evidence in the present record that appellant did file in Taos, the majority apparently assumes that such a filing was made. See discussion in text, infra. My opinion, thus, also assumes the filings were made in Taos. Should there be questions as to these facts, the proper action would be to vacate and remand this case for for further consideration by the State Office.

2/ The majority makes much of the fact that in his statement of reasons appellant indicated that the filings were not made in Taos until late December. It seems clear that appellant was ignorant of the true actions of his agent, but I fail to see how this ignorance has any scintilla of relevance to the question before us. Inasmuch as appellant's agent clearly stated in his letter of Dec. 6, 1980, that he had already filed the proofs in the Taos office, the fact that appellant may have thought they were not filed until late December is an irrelevancy. As we have often noted, an appellant is chargeable with the actions of his of her agent.

known that the documents were properly filed in Santa Fe. While appellant's agent stated that he "thought maybe" they had been transmitted to Santa Fe, I find it difficult to understand why the Taos Office would accept these documents unless it intended to forward them to Santa Fe.

Then, too, the documents were received in Taos in more than sufficient time to forward them to Santa Fe, even were we to assume that they were not received in Taos until December 8. 3/ Cf. Richard L. Rosenthal, 45 IBLA 146 (1980). We have been afforded no explanation as to why the documents were not forwarded to Santa Fe or returned to appellant.

Finally, when the State Office in Santa Fe was informed on December 10, 1980, that the documents were filed in Taos, there is no indication that they contacted Taos to instruct it to transmit the filings to Santa Fe or, failing that, informed appellant of the need to file in the State Office. Indeed, the record indicates that they did nothing further, save issue the decision on appeal herein.

This Board has not, in the past, found estoppel against the Government in the context of mining claim recordation. I have personally expressed the view that estoppel will not lie where an appellant asserts that he or she relied upon oral advice of a Departmental employee which was contrary to the express admonitions of the statutes and regulations. See, e.g., Clayton H. Read, 49 IBLA 200, 203 (1980) (concurring opinion). Those cases, however, involved situations in which appellants had failed to file certain documents in any office of BLM, thus violating statutory prescriptions.

The instant case, however, presents a considerably different question. The "proper office" for filing is a purely regulatory matter. See Inspiration Development Co., 54 IBLA 390 (1981). There is, of course, no statutory or regulatory prohibition against the forwarding of mail from one BLM office to another. Indeed, had the Taos Office transmitted the filings to Santa Fe prior to December 31, the statutory and regulatory requirements would have been met. The question then is really whether appellant had a right to rely on the fact that the Taos Office would either forward his filings to the State Office or return them to him in a moderately timely fashion. Considering the totality of the circumstances in this appeal, I believe that such an expectation was reasonable, and that the Government should be estopped from denying that the required documents were not timely filed in the proper office of BLM. Cf. Hiko Bell Mining & Oil Co., v. Kleppe, Civ. No. C 76-138 (D. Utah Apr. 4, 1978).

3/ While appellant's letter does not specifically state that the proofs were filed in Taos on Aug. 28, 1980, the letter is certainly amenable of that interpretation. In any event, such a filing could have occurred no later than Dec. 8, the date of the letter.

James L. Burski
Administrative Judge